

## Comptroller of the Currency, Treasury

## §31.1

Ownership and Equity Protection Act. 15 U.S.C. 1639 *et seq.*

10. Original principal balance of the loan in excess of appraised value.

11. Payment schedules that consolidate more than two periodic payments and pay them in advance from the loan proceeds.

12. Payments to home improvement contractors under a home improvement contract from the proceeds of a residential mortgage loan other than by an instrument payable to the consumer, jointly to the consumer and the contractor, or through an independent third party escrow agent.

C. *Enhanced Care to Avoid Abusive Loan Terms, Conditions, and Features in Certain Mortgages.* A bank may face heightened risks when it solicits or offers loans to consumers who are not financially sophisticated, have language barriers, or are elderly, or have limited or poor credit histories, are substantially indebted, or have other characteristics that limit their credit choices. In connection with such consumers, a bank should exercise enhanced care if it employs the residential mortgage loan terms, conditions, and features described in paragraph B of this section III, and should also apply appropriate heightened internal controls and monitoring to any line of business that does so.

D. *Avoidance of Consumer Misunderstanding.* A bank's residential mortgage lending activities should include provision of timely, sufficient, and accurate information to a consumer concerning the terms and costs, risks, and benefits of the loan. Consumers should be provided with information sufficient to draw their attention to these key terms.

E. *Purchased and Brokered Loans.* With respect to consumer residential mortgage loans that the bank purchases, or makes through a mortgage broker or other intermediary, the bank's residential mortgage lending activities should reflect standards and practices consistent with those applied by the bank in its direct lending activities and include appropriate measures to mitigate risks, such as the following:

1. Criteria for entering into and continuing relationships with intermediaries and originators, including due diligence requirements.

2. Underwriting and appraisal requirements.

3. Standards related to total loan compensation and total compensation of intermediaries, including maximum rates, points, and other charges, and the use of overages and yield-spread premiums, structured to avoid providing an incentive to originate loans with predatory or abusive characteristics.

4. Requirements for agreements with intermediaries and originators, including with respect to risks identified in the due diligence process, compliance with appropriate bank

policies, procedures and practices and with applicable law (including remedies for failure to comply), protection of the bank against risk, and termination procedures.

5. Loan documentation procedures, management information systems, quality control reviews, and other methods through which the bank will verify compliance with agreements, bank policies, and applicable laws, and otherwise retain appropriate oversight of mortgage origination functions, including loan sourcing, underwriting, and loan closings.

6. Criteria and procedures for the bank to take appropriate corrective action, including modification of loan terms and termination of the relationship with the intermediary or originator in question.

F. *Monitoring and Corrective Action.* A bank's consumer residential mortgage lending activities should include appropriate monitoring of compliance with applicable law and the bank's lending standards and practices, periodic monitoring and evaluation of the nature, quantity and resolution of customer complaints, and appropriate evaluation of the effectiveness of the bank's standards and practices in accomplishing the objectives set forth in these Guidelines. The bank's activities also should include appropriate steps for taking corrective action in response to failures to comply with applicable law and the bank's lending standards, and for making adjustments to the bank's activities as may be appropriate to enhance their effectiveness or to reflect changes in business practices, market conditions, or the bank's lines of business, residential mortgage loan programs, or customer base.

[70 FR 6332, Feb. 7, 2005]

## PART 31—EXTENSIONS OF CREDIT TO INSIDERS AND TRANS-ACTIONS WITH AFFILIATES

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AUTHORITY: 12 U.S.C. 93a, 375a(4), 375b(3), and 1817(k).

SOURCE: 61 FR 54536, Oct. 21, 1996, unless otherwise noted.

### §31.1 Authority.

This part is issued by the Comptroller of the Currency pursuant to 12

## § 31.2

## 12 CFR Ch. I (1–1–09 Edition)

U.S.C. 93a, 375a(4), 375b(3), 1817(k) and 1817(k), as amended.

[61 FR 54536, Oct. 21, 1996, as amended at 73 FR 22251, Apr. 24, 2008]

### § 31.2 Insider lending restrictions and reporting requirements.

(a) *General rule.* A national bank and its insiders shall comply with the provisions contained in 12 CFR part 215.

(b) *Enforcement.* The Comptroller of the Currency administers and enforces insider lending standards and reporting requirements as they apply to national banks and their insiders.

#### APPENDIX A TO PART 31—INTERPRETATIONS: DEPOSITS BETWEEN AFFILIATED BANKS

a. *General rule.* A deposit made by a bank in an affiliated bank is treated as a loan or extension of credit to the affiliate bank under 12 U.S.C. 371c, as this statute is implemented by the Federal Reserve Board's Regulation W, 12 CFR part 223. Thus, unless an exemption from Regulation W is available, these deposits must be secured in accordance with 12 CFR 223.14. However, a national bank may not pledge assets to secure private deposits unless otherwise permitted by law (see, e.g., 12 U.S.C. 90 (permitting collateralization of deposits of public funds);

12 U.S.C. 92a (trust funds); and 25 U.S.C. 156 and 162a (Native American funds)). Thus, unless one of the exceptions to 12 CFR part 223 noted in paragraph b. of this interpretation applies, unless another exception applies that enables a bank to meet the collateral requirements of § 223.14, or unless a party other than the bank in which the deposit is made can legally offer and does post the required collateral, a national bank may not:

1. Make a deposit in an affiliated national bank;

2. Make a deposit in an affiliated State-chartered bank unless the affiliated State-chartered bank can legally offer collateral for the deposit in conformance with applicable State law and 12 CFR 223.14; or

3. Receive deposits from an affiliated bank.

b. *Exceptions.* The restrictions of 12 CFR part 223 (other than 12 CFR 223.13, which requires affiliate transactions to be consistent with safe and sound banking practices) do not apply to deposits:

1. Made in an affiliated depository institution or affiliated foreign bank provided that the deposit represents an ongoing, working balance maintained in the ordinary course of correspondent business. See 12 CFR 223.42(a); or

2. Made in an affiliated, insured depository institution that meets the requirements of the “sister bank” exemption under 12 CFR 223.41(a) or (b).

[73 FR 22251, Apr. 24, 2008]

#### APPENDIX B TO PART 31—COMPARISON OF SELECTED PROVISIONS OF PART 31 AND PART 32 (AS OF OCTOBER 1, 1996)

NOTE: Even though part 31 now simply requires that national banks comply with the insider lending provisions contained in Regulation O (Reg. O) (12 CFR part 215), the chart in this appendix refers to part 31 because Reg. O is a Federal Reserve Board regulation and part 31 is the means by which several provisions of Reg. O are made applicable to national banks and their insiders.

##### DEFINITION OF “LOAN OR EXTENSION OF CREDIT”

Renewals ..... In most cases, the two definitions of “loan or extension of credit” will be applied in the same manner. A difference exists, however, in the treatment of renewals. Under Part 31, a renewal of a loan to an “insider” (which, unless noted otherwise, includes a bank’s executive officers, directors, principal shareholders, and “related interests” of such persons) is considered to be an extension of credit. Under Part 32, renewals generally are not considered to be an extension of credit if the bank exercises reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit. Renewals would be considered an extension of credit under Part 32, however, if new funds are advanced to the borrower, a new borrower replaces the original borrower, or the OCC determines that the renewal was undertaken to evade the lending limits.